



Federal Update for January 20 – 24, 2014



Following is a Summary of Veteran Related Legislation Introduced in the House and Senate Since the Last Bulletin was Published

- H.R.3807: Uphold Our Promise to Veterans Act. A bill to repeal the annual adjustment of retired pay and retainer pay amounts for retired members of the Armed Forces under age 62, and for other purposes. Sponsor: Rep Poe, Ted [TX-2] (introduced 12/23/2013). Related Bills: H.R.1017, H.R.3792, H.R.3794, H.R.3797, H.R.3798, H.R.3808, S.1856, S.1869, S.1872, S.1880
- H.R.3808: Military Disability Retiree & SBP Annuitant Exclusion to COLA Adjustment. To provide that the annual adjustment of retired pay for members of the Armed Forces under the age of 62 under the Bipartisan Budget Act of 2013 shall not apply to members retired for disability and to retired pay used to compute certain Survivor Benefit Plan annuities. Sponsor: Rep Van Hollen, Chris [MD-8] (introduced 12/23/2013) Related Bills: H.R.3792, H.R.3794, H.R.3797, H.R.3798, H.R.3804, H.R.3807, S.1872, S.1880
- H.R.3810: Mount Soledad Veterans Memorial Preservation Act. A bill to provide for the conveyance of the Mt. Soledad Veterans Memorial in San Diego, California. Sponsor: Rep Hunter, Duncan D. [CA-50] (introduced 1/3/2014)
- H.R.3831: VA Dialysis Pilot Program Review. A bill to require the Secretary of Veterans Affairs to review the dialysis pilot program implemented by the Department of Veterans Affairs and submit a report to Congress before expanding that program, and for other purposes. Sponsor: Rep Roe, David P. [TN-1] (introduced 1/9/2014) [Source: <http://www.loc.gov> & <http://www.govtrack.us/congress/bills> 12 Jan 2013 ++]

Veteran Hearing/Mark-up Schedule ► As of 14 Jan 2014

Following is the current schedule of recent and future Congressional hearings and markups pertaining to the veteran community. Congressional hearings are the principal formal method by which committees collect and analyze information in the early stages of legislative policymaking. Hearings usually include oral testimony from witnesses, and questioning of the witnesses by members of Congress. When a U.S. congressional committee meets to put a legislative bill into final form it is referred to as a mark-up. Veterans are encouraged to contact members of these committees prior to the event listed and provide input on what they want their legislator to do at the event.

- January 15, 2014. House Veterans' Affairs Committee, Subcommittee on Oversight & Investigations will hold a hearing called "Vendors in the OR - VA's Failed Oversight of Surgical Implants."
- February 25, 2014. House Veterans' Affairs Committee (Chairman Miller, R-Fla.) will hold a hearing to receive a legislative presentation of the Disabled American Veterans.
- March 5, 2014. House Veterans' Affairs Committee (Chairman Miller, R-Fla.) and Senate Veterans' Affairs Committee (Chairman Sanders, I-Vt.) will hold a joint hearing to receive the legislative presentation of Veterans of Foreign Wars.
- March 6, 2014. House Veterans' Affairs Committee and Senate Veterans Affairs Committee will hold a joint hearing to receive the legislative presentations of Veterans Organizations.

[Source: Veterans Corner w/Michael Isam 14 Jan 2014 ++]

USERRA Update ► USPS Ordered to Reinstate National Guardsman

A federal board has again ordered the U.S. Postal Service to reinstate a National Guardsman wrongly fired from his job as a postal worker because he took military leave, telling the agency to pay him what could add up to millions in back pay, benefits and legal fees. On 6 JAN, the U.S. Merit Systems Protection Board, which rules on disputed federal personnel actions, reiterated that the decision in 2000

to fire Sgt. Maj. Richard Erickson, now 50, violated federal laws designed to protect troops' civilian jobs. The board made a similar ruling in 2012 and ordered the Postal Service to immediately reinstate Erickson, a decorated long-time Special Forces member, even if it planned to appeal. But the Postal Service appealed the ruling without reinstating Erickson. On Monday, the board also declared that a Postal Service argument that Erickson was not entitled to back pay and benefits because he did not meet a deadline to request reemployment was invalid because he had already been wrongly fired.

According to the ruling, which the board described as its "final decision," the Postal Service has 20 days to reinstate Erickson and 60 days to provide back pay since 2000, plus interest and benefits. The Postal Service must also report back to the Merit Systems Protection Board and describe how it has carried out the actions, the ruling said. Erickson's attorney, Matthew Estes of the law firm Tully Rinckey, said that his client hopes the ongoing battle with the Postal Service -- which has included numerous rulings from the Merit System Protection Board as well as a federal court -- is over. "As far as we're concerned, this is the end of the road and we're finally done," he said. Estes said the law firm has not yet made a precise calculation of what Erickson is owed, but said that with more than a decade of back pay, lost benefits and attorney fees, it could exceed \$2 million. Postal Service spokeswoman Darlene Casey said 10 JAN she could not comment on the ruling or how the Postal Service planned to react. "It is inappropriate for us to comment at this time, as litigation is ongoing and appeals are possible," Casey said. Erickson, who served with the 3rd Special Forces Battalion, 20th Special Forces Group at the time of his firing, has been battling for reinstatement for years. He was hired in 1988 by the Postal Service and joined the National Guard in 1990, he said. He missed several years of work because of military service, but never surpassed the five-year limit established by the Uniform Services Employment and Reemployment Rights Act (USERRA). Nevertheless, the Postal Service argued he had abandoned his job. Erickson, who is now active duty and works for U.S. Army Special Operations Command at Fort Bragg, N.C., was on an operation with the Special Forces when he received a letter informing him that he'd been fired. "I thought it was a joke at first," he said. "Here I am doing my call to duty -- what I'm required to do because I'm in the military -- and they fire me for it." He said he knows other soldiers who have illegally lost jobs because of the obligations of military service, and said he hopes Monday's ruling encourages them to fight back. And he hopes it serves as a warning to employers not inclined

to follow the law. Erickson, who said he has been fortunate to have the Army to support his family after losing his post office job, isn't sure he wants to go back to a civilian job working for the agency that threw him out of a job and worked to keep him gone even though he's entitled to it. "It's a shame," he said. "You go over there and fight the enemy, then you come back here and have to fight your employer for your job." [Source: Stars and Stripes | Chris Carroll | 4 Jan 2014 ++]

Women USMC Physical Standards ► Minimum Hits a Snag

More than half of female Marines in boot camp can't do three pull-ups, the minimum standard that was supposed to take effect with the new year, prompting the Marine Corps to delay the requirement, part of the process of equalizing physical standards to integrate women into combat jobs. The delay rekindled sharp debate in the military on the question of whether women have the physical strength for some military jobs, as service branches move toward opening thousands of combat roles to them in 2016. Although no new timetable has been set on the delayed physical requirement, Marine Corps Commandant Gen. James Amos wants training officials to "continue to gather data and ensure that female Marines are provided with the best opportunity to succeed," Capt. Maureen Krebs, a Marine spokeswoman, said 2 JAN.

Starting with the new year, all female Marines were supposed to be able to do at least three pull-ups on their annual physical fitness test and eight for a perfect score. The requirement was tested in 2013 on female recruits at Marine Corps Recruit Depot, Parris Island, S.C., but only 45 percent of women met the minimum, Krebs said. The Marines had hoped to institute the pull-ups on the belief that pull-ups require the muscular strength necessary to perform common military tasks such as scaling a wall, climbing up a rope or lifting and carrying heavy munitions. Officials felt there wasn't a medical risk to putting the new standard into effect as planned across the service, but that the risk of losing recruits and hurting retention of women already in the service was unacceptably high, she said.

Because the change is being put off, women will be able to choose which test of upper-body strength they will be graded on in their annual physical fitness test. Their choices:

- Pull-ups, with three the minimum. Three is also the minimum for male Marines, but they need 20 for a perfect rating.
- A flexed-arm hang. The minimum is for 15 seconds; women get a perfect score if they last for 70 seconds. Men don't do the hang in their test.

Officials said training for pull-ups can change a person's strength, while training for the flex-arm hang does little to adapt muscular strength needed for military tasks. The delay on the standard could be another wrinkle in the plan to begin allowing women to serve in jobs previously closed to them such as infantry, armor and artillery units. The military services are working to figure out how to move women into newly opened jobs and have been devising updated physical standards, training, education and other programs for thousands of jobs they must open Jan. 1, 2016, said Navy Lt. Cmdr. Nathan Christensen, a Defense Department spokesman. They must open as many jobs to women as possible; if they decide to keep some closed, they must explain why. Military brass has said repeatedly that physical standards won't be lowered to accommodate female applicants. Success for women in training for the upcoming openings has come in fits and starts.

In fall 2012, only two female Marines volunteered for the 13-week infantry officers training course at Quantico, Va., and both failed to complete it. But the following fall, three Marines became the first women to graduate from the Corps' enlisted infantry training school in North Carolina. They completed the same test standards as the men in the course, which included a 12-mile march with an 80-pound pack and various combat fitness trials such as timed ammunition container lifts and tests that simulate running under combat fire. Officials had added specific training for female recruits when the pull-up requirement was announced in December 2012, and they came up with a workout program for women already serving.

Military testing for physical skill and stamina has changed over the decades with needs of the armed forces. Officials say the first recorded history of Marine Corps

physical fitness tests, for example, was 1908 when President Theodore Roosevelt ordered that staff officers must ride horseback 90 miles and line officers walk 50 miles over a three-day period to pass. A test started in 1956 included chin-ups, pushups, broad jump, 50-yard duck waddle and running. The first test for women was started in 1969: A 120-yard shuttle run, vertical jump, knee pushups, 600-yard run/walk and sit-ups. [Source: Associated Press article 2 Jan 2014 ++]

TRICARE Lab Fees ► Some You May Have to Pay For

Tricare beneficiaries soon will have to pay out of pocket for certain diagnostic genetic tests that their civilian physicians order, but that the Defense Health Agency doesn't view as appropriate or medically necessary. In January 2013, without notice to beneficiaries or to health care providers, Tricare stopped reimbursing clinical laboratories for more than 100 different genetic or "molecular pathology" tests. Beneficiaries haven't complained yet because the laboratories impacted are still providing the tests that physicians order at no charge, said Julie Khani, vice president of American Clinical Laboratory Association (ACLA), which lobbies on behalf of the impacted laboratories. To date, labs have provided about \$10 million worth of free tests to Tricare users. "That's obviously unsustainable," Khani said. Most of these tests cost about \$60 but a few carry charges of several thousand dollars.

Medical science has seen an explosion of clinical tests designed to diagnosis and treat ailments based on a patient's DNA. With thousands of new tests added annually, driven by demand for personalized medicine, the Food and Drug Administration is weighing the need to regulate the industry. One of the more routine genetic tests that Tricare no longer covers is used to determine if a woman who is pregnant carries a marker for cystic fibrosis, which would increase chances of the baby having the disease. If the woman has the marker, the father usually is tested too because both parents must have the CF gene for the fetus to be at risk of CF. If both parents are found to have it, the likelihood of their baby having CF is one in four, according to the Cystic Fibrosis Foundation. With this test no longer covered, "Tricare beneficiaries will not receive the standard of care or benefits equal to other insured patients," Khani said. The American Congress of Obstetricians and Gynecologists has recommended prenatal testing for CF for more than a decade, she said. "It's covered by Medicaid and other commercial

health plans. It is also the standard of care under VA-DoD clinical practice guidelines for management of pregnancy,” Khani said. “Clearly an important test.” The Defense Health Agency disagrees. Though no official was made available to be interviewed, DHA gave written responses to our questions. In one, it dismissed the significance of the prenatal CF testing. “Awareness that a fetus is at increased risk of having CF, in and of itself, does not usually change the management of labor, delivery and the neonatal period,” wrote DHA officials. Also, they noted, infants at birth are tested for a host of health conditions, including CF, and those tests continue to be covered by Tricare. In July, DHA did remove the CF test from its “no government pay” list but DHA has continued to refuse to reimburse laboratories such tests. Reps. Tom Marino and James P. McGovern, co-chairs of the Congressional Cystic Fibrosis Caucus, urged Lt. Gen. Douglas J. Robb, director of DHA, in a letter signed 6 JAN to reconsider the decision not to cover prenatal CF testing, arguing that “patient care will suffer.”

What drove the decision by Tricare last January to stop reimbursing for many genetic or laboratory-developed tests (LDTs) was the American Medical Association’s publication of new Current Procedural Terminology (CPT) codes for laboratory tests. The codes gave greater transparency to how Tricare was being billed, DHA said. It could “identify specific laboratory developed tests that 1) have not been approved or cleared by the Food and Drug Administration and/or 2) failed to meet Tricare criteria for coverage.” For example, DHA said, “demand genetic testing that is not medically necessary or does not assist in medical management of the patient” is not reimbursable. Also, DHA emphasized that Tricare cannot cover any laboratory developed test that has not been approved by the FDA. The ACLA criticizes DHA on this point, arguing that Tricare does cover many other laboratory-developed tests not FDA approved, including pap smears, a routine test for cervical cancer.

The DHA “has a flawed interpretation of its own policy” which “places Tricare out of step with other government and commercial payers, and it impacts the patient,” said Khani. “We are deeply concerned that Tricare beneficiaries will be denied vital services that are critical to the diagnosis and treatment of disease. And these are tests Tricare has covered historically.” If Tricare doesn’t begin soon to pay for these tests, doctors won’t stop ordering them but laboratories will have no choice but to charge patients for their cost, Khani said. The Military Coalition, an umbrella group of military associations and veterans groups, recognizes that

laboratory profits and some very complex medical questions are entwined in this debate between DHA and industry. But one clear concern for beneficiary advocates, said Kathy Beasley, co-chair of the coalition's health subcommittee, is that DHA has created two standards of care regarding molecular pathology tests. Patients who use civilian providers will have to pay for these tests, while patients at military clinics and hospitals won't. Providers in the direct care system can continue to order such tests knowing the military will pay for them. "Tricare beneficiaries without access to military treatment facilities are relegated to second-class healthcare. This is troubling," Beasley said.

DHA acknowledges this disparity in access to laboratory services between purchased care and direct care. Officials explained that a single contract is in effect that allows Army, Navy and Air Force providers to request lab services if military facilities cannot perform the tests in house. "As this is not a DHA contract, we are in the process of gathering data regarding the tests being ordered by MTF providers and will examine any changes that need to be made to the contract," DHA said. "Lab testing, whether ordered in the private sector or by MTF providers, needs to be safe and effective." But DHA said differences in lab test coverage might survive any such review because purchased care has more restrictive laws and regulations. [Source: Stars & Stripes | Tom Philpott | 9 Jan 2014 ++]

TRICARE Pharmacy Mail Order Update: Website Calculator

As the deadline nears for Tricare for Life beneficiaries to begin filling routine prescriptions at military pharmacies or by mail, Tricare has introduced a calculator to show just how much money they'll save by making the switch. Starting 14 FEB, Medicare-eligible retirees must fill long-term maintenance medication prescriptions by mail or use a military pharmacy. Tricare recently introduced a calculator on its pharmacy web site at <http://www.tricare.mil/pharmac> that lets beneficiaries figure out the cost savings of filling a 90-day prescription by mail compared to the same prescription purchased at a retail pharmacy. Since Tricare beneficiaries pay no copayments for generic medications and less than \$5 a month for brand-name medications by mail, the savings can add up.

According to the calculator, a family receiving one generic prescription and two brand-name prescriptions could save \$91 a quarter and up to \$364 a year by switching to mail order. Tricare beneficiaries pay \$5 for a 30-day generic prescription and \$17 per 30-day brand name prescription at retail pharmacies. A 90-day prescription by mail for generic medications incurs no copayment while brand names cost \$13 for a 90-day prescription. Tricare beneficiaries pay no copayments at military treatment facilities. The mandatory mail-order requirement for military retirees on Tricare for Life was approved by Congress as part of the 2013 defense policy bill. It was deemed a tradeoff to avoid implementing across-the-board, large Tricare pharmacy copay increases sought by the Pentagon.

Over the next month, Tricare will send affected beneficiaries of the pending change. Under the program, beneficiaries will be able to opt out of the five-year initiative after one year. Their obligation starts when they first fill a prescription through mail order, according to the rule published in the Federal Register. To make up for any delays between ordering refills and receiving them, beneficiaries will be allowed to receive up to two 30-day refills at a retail store during the transition. Tricare is urging beneficiaries to consider making the switch now. For more information on how to transfer medications, beneficiaries can call Express Scripts, Tricare's pharmacy benefits manager, at 877-363-1303 (or visit <http://www.express-scripts.com/TRICARE>) for more information. [Source: MilitaryTimes | Patricia Kime | 6 Jan 2014 ++]

Alzheimer's Update ► Vitamin E Impact

Researchers say vitamin E might slow the progression of mild-to-moderate Alzheimer's disease — the first time any treatment has been shown to alter the course of dementia at that stage. In a study of more than 600 older veterans, high doses of the vitamin delayed the decline in daily living skills, such as making meals, getting dressed and holding a conversation, by about six months over a two-year period. The benefit was equivalent to keeping one major skill that otherwise would have been lost, such as being able to bathe without help. For some people, that could mean living independently rather than needing a nursing home. Vitamin E did not preserve thinking abilities, though, and it did no good for patients who took it with another Alzheimer's medication. But those taking vitamin E alone required less help from caregivers — about two fewer hours each

day than some others in the study. "It's not a miracle or, obviously, a cure," said study leader Dr. Maurice Dysken of the Minneapolis VA Health Care System. "The best we can do at this point is slow down the rate of progression." The U.S. Department of Veterans Affairs sponsored the study, published Tuesday by the Journal of the American Medical Association. No one should rush out and buy vitamin E, several doctors warned. It failed to prevent healthy people from developing dementia or to help those with mild impairment ("pre-Alzheimer's") in other studies, and one suggested it might even be harmful. Still, many experts cheered the new results after so many recent flops of once-promising drugs. "This is truly a breakthrough paper and constitutes what we have been working toward for nearly three decades: the first truly disease-modifying intervention for Alzheimer's," said Dr. Sam Gandy of Mount Sinai School of Medicine in New York. "I am very enthusiastic about the results."

About 35 million people worldwide have dementia, and Alzheimer's is the most common type. In the U.S., about 5 million have Alzheimer's. There is no cure and current medicines just temporarily ease symptoms. Researchers don't know how vitamin E might help, but it is an antioxidant, like those found in red wine, grapes and some teas. Antioxidants help protect cells from damage that can contribute to other diseases, says the federal Office on Dietary Supplements. Many foods contain vitamin E, such as nuts, seeds, grains, leafy greens and vegetable oils. There are many forms, and the study tested a synthetic version of one — alpha-tocopherol — at a pharmaceutical grade and strength, 2,000 international units a day.

Years ago, another study found that the same form and dose helped people with more advanced Alzheimer's, and many were prescribed it. But vitamin E fell out of favor after a 2005 analysis of many studies found that those taking more than 400 units a day were more likely to die of any cause. The new study involved 613 veterans, nearly all male, 79 years old on average, with mild to moderate Alzheimer's, at 14 VA centers. All were already taking Aricept, Razadyne or Exelon — widely used, similar dementia medicines. Participants were placed in four groups and given either vitamin E, another dementia medicine called memantine (its brand name is Namenda), both pills or dummy pills. After a little more than two years of follow-up, those on vitamin E alone had a 19 percent lower annual rate of decline in daily living skills compared to the placebo group. Memantine made no difference, and vitamin E did not affect several tests of thinking skills.

"It's a subtle effect but it's probably real," Dr. Ron Petersen, the Mayo Clinic's Alzheimer's research chief, said of the benefit on daily living from vitamin E. "That has to be weighed against the potential risks" seen in earlier studies, he said. Heather Snyder, director of medical and scientific operations for the Alzheimer's Association, said the group's position is that "no one should take vitamin E for Alzheimer's disease or other memory issues except under the supervision of a physician," because it can interfere with blood thinners, cholesterol drugs and other medicines. The new results also need to be verified in a fresh study that includes more women and minorities, she said. [Source: Associated Press article 1 Jan 2014 ++]